

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

KALLIOPE NICHOLAS  
Plaintiff,

v.

HOME DEPOT USA, INC.  
Defendant.

CIVIL ACTION NO.  
05 10814 RGS

**HOME DEPOT USA, INC.'S  
ANSWER AND JURY DEMAND**

Home Depot USA, Inc., incorrectly sued herein as "Home Depot, Inc." ("Home Depot") responds to the plaintiff's complaint as follows:

1. Home Depot lacks sufficient knowledge and information to admit or deny the allegations in paragraph 1.
2. Home Depot admits that Home Depot USA, Inc. operates retail stores, including a store in Watertown, Massachusetts.
- 3-4. Denied.
5. Paragraph 5 states a conclusion of law to which no response is required of Home Depot. To the extent a response is required, Home Depot denies the allegations in paragraph 5.

**FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state claims against Home Depot upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The Complaint should be dismissed for lack of service and/or service of process.

**THIRD AFFIRMATIVE DEFENSE**

The plaintiff's alleged injuries and damages were caused by acts or omissions of third persons over whom Home Depot exercised no control and for whose conduct it bears no responsibility.

**FOURTH AFFIRMATIVE DEFENSE**

The plaintiff is barred from recovery in whole or in part on any theory of negligence because her own conduct caused or contributed to cause the alleged injuries and damages.

**FIFTH AFFIRMATIVE DEFENSE**

The plaintiff's alleged injuries and damages were caused by the intervening and superseding actions of third persons.

**SIXTH AFFIRMATIVE DEFENSE**

The plaintiff is barred from recovery because her conduct alone or in conjunction with the conduct of third parties was the sole proximate cause of her alleged injuries and damages.

**SEVENTH AFFIRMATIVE DEFENSE**

The plaintiff failed to take reasonable and appropriate action to mitigate the injuries and damages she allegedly sustained as a result of the alleged accident.

**EIGHTH AFFIRMATIVE DEFENSE**

The plaintiff is barred from recovery because Home Depot had no notice of the condition the plaintiff alleges to have been defective.

**JURY DEMAND**

Home Depot demands a trial by jury on all issues.

Dated: April 27, 2005

HOME DEPOT USA, INC.  
By Its Attorneys,  
CAMPBELL CAMPBELL EDWARDS & CONROY  
PROFESSIONAL CORPORATION

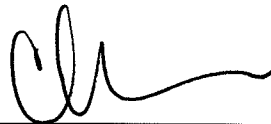


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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the following attorney of record by mail on April 27, 2005.

J. Michael Conley  
Kenney & Conley  
100 Grandview Road  
Braintree, MA 02184



Christopher A. Callanan